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**IN THE
HO-CHUNK NATION TRIAL COURT**

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HOCOK FEDERAL CREDIT UNION,

JUDGMENT

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Plaintiff,

v.

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GENE AND DIANE DEMARRIAS,

Respondent.

Case No.: **CV 98-34**

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INTRODUCTION

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The Ho-Chunk Nation [hereinafter HCN] Trial Court received plaintiff's *Complaint* on May 6, 1998. The plaintiff also filed copies of a letter dated August 27, 1997 notifying defendants of the agreed payment requirements and the amount due (Exhibit A), and a second letter dated December 15, 1997 articulating the amount due and a *Notice of Right to Cure Default* in the sum of \$746.01 dated December 15, 1997, with green card attached (Exhibits B & C) and the Consumer Note dated March 24, 1997 (Exhibit D). *Service by Publication* occurred on May 29, 1998 and June 17, 1998. The defendant, Diana DeMarrias was personally serves this *Complaint, Summons* and attachments on June 29, 1997. This action was brought under various provisions of WISCONSIN STATUTES, CONSUMER CREDIT TRANSACTIONS § 425 which defines when default occurs and how a creditor may pursue individuals who have become default.

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This Court having considered WISCONSIN STATUTES, CONSUMER CREDIT TRANSACTIONS § 425 as persuasive authority finds in favor of plaintiff, Hocak Federal Credit Union.

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APPLICABLE LAW

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HCN NATION CONSTITUTION, ART.I

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§ 1. Territory. The territory of the Ho-Chunk Nation shall include all lands held by the Nation or the People, or by the United States for the benefit of the Nation or the People, and any additional lands acquired by the Nation or by the United States for the benefit of the Nation or the People, including but not limited to air, water, surface, subsurface, natural resources and any interest therein,

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notwithstanding the issuance of any patent or right-of-way in fee or otherwise, by the governments of the United States or the Ho-Chunk Nation, existing or in the future.

§ 2. Jurisdiction. The jurisdiction of the Ho-Chunk Nation shall extend to all territory set forth in Section 1 of this Article and to any and all persons or activities therein, based upon the inherent sovereign authority of the Nation and the People or upon Federal law.

HCN CONSTITUTION, ART. VII

§ 5. Jurisdiction of the Judiciary. (a) The Trial Court shall have original jurisdiction over all cases and controversies, both criminal and civil, in law or in equity, arising under the Constitution, laws, customs, and traditions of the Ho-Chunk Nation, including cases in which the Ho-Chunk Nation, or its officials and employees, shall be a party. Any such case or controversy arising within the jurisdiction of the Ho-Chunk Nation shall be filed in the Trial Court before it is filed in any other court. This grant of jurisdiction by the General Council shall not be construed to be a waiver of the Nation's sovereign immunity.

§ 6. Powers of the Trial Court. (a) The Trial Court shall have the power to make findings of fact and conclusions of law. The Trial Court shall have the power to issue all remedies in law and in equity including injunctive and declaratory relief and all writs including attachment and mandamus.

WISCONSIN STATUTES, CONSUMER CREDIT TRANSACTIONS

§ 425.103 ACCRUAL OF CAUSE OF ACTION; "DEFAULT" (1995-1996). (1) Notwithstanding any term or agreement to the contrary, no cause of action with respect to the obligation of a customer in a consumer credit transaction shall accrue in favor of a creditor except by reason of a default, as defined in sub. (2).

(2) "Default," with respect to a consumer credit transaction, means without justification under any law:

(a) With respect to a transaction other than one pursuant to an open-end plan; if the interval between scheduled payments is 2 months or less, to have outstanding an amount exceeding one full payment which has remained unpaid for more than 10 days after the scheduled or deferred due dates, or the failure to pay the first payment or the last payment, within 40 days of its scheduled or deferred due date. . . For purposes of this paragraph the amount outstanding shall not include any delinquency or deferral charges and shall be computed by applying each payment first to the installment most delinquent and then to subsequent installments in the order they come due.

WISCONSIN STATUTES, CONSUMER CREDIT TRANSACTIONS

§ 425.104 NOTICE OF CUSTOMER'S RIGHT TO CURE DEFAULT (1995-1996). (1) A merchant who believes that a customer is in default may give the customer written notice of the alleged default and, if applicable, of the customer's right to cure any such default (s. 425.105).

(2) Any notice given under this section shall contain the name, address and telephone number of the creditor, a brief identification of the consumer credit transaction, a statement of the nature of the alleged default and a clear statement of the total payment, including an itemization of any delinquency charges, or other performance necessary to cure the alleged default, the exact date by which the amount must be paid or performance tendered and the name, address and telephone number of the person to whom any payment must be made, if other than the creditor.

WISCONSIN STATUTES, CONSUMER CREDIT TRANSACTIONS

§ 425.105 CURE OF DEFAULT (1995-1996). (1) A merchant may not accelerate the maturity of a consumer credit transaction, commence any action except as provided in s. 425.205(6), or demand or take possession of collateral or goods subject to a consumer lease other than by accepting a voluntary surrender thereof (s. 425.204), unless the merchant believes the customer to be in default (s. 425.403), and then only upon the expiration of 15 days after a notice is given pursuant to s. 425.104 if the customer has the right to cure under this section.

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FINDINGS OF FACT

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1. Ms. Diana DeMarrias is a member of the Ho-Chunk Nation.

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2. On or about May 8, 1997, the parties entered into an agreement for a loan worth as signed in

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Consumer Note dated March 24, 1997. (*See*, Plaintiff's Exhibit D)

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3. On or about August 27, 1997, the plaintiff sent the defendants a letter reminding the

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defendants of their obligation to make monthly payments of \$124.42 due on the 20th of each month,

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and the delinquent payments of \$373.29. (*See*, Plaintiff's Exhibit A)

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4. On or about December 15, 1997, the plaintiff sent the defendants another letter reminding the

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defendant of their loan obligation and a delinquent bill \$745 with a *Right to Cure Default* form

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enclosed. (*See*, Plaintiff's Exhibit B and C)

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5. Due to the outstanding debt owed by the defendants, there is a collection service debt of

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\$139.00 and a post judgment claim of \$47.00.

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6. At July 29, 1998 *Hearing*, Ms. DeMarrias, who appeared by telephone, did not dispute the

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outstanding debt owed. She did argue that Mr. Gene DeMarrias is liable for the debt owed to the

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plaintiff.

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DECISION

In light of the uncontested facts and pursuant to the applicable law cited above, this Court finds that defendants Gene and Diana DeMarrias have been provided with ample opportunity to

address their financial obligations to plaintiff Hocak Federal Credit Union. Mr. and Mrs. Gene

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DeMarrias were served with notice on two separate occasions, both of which supplied them with the applicable law and relevant information required to resolve the delinquency. As the defendant Diana DeMarrias responded to the *Complaint*, the Trial Court finds in favor of plaintiff on this matter and enters *Judgment* against defendants. It remains uncontested that Gene and Diana DeMarrias owe \$1,189.34 to the Hocak Federal Credit Union as they has not complied with the reasonable payment schedule voluntarily entered into at the beginning of the credit transaction.

This Court finds that Gene and Diane DeMarrias are liable to Hocak Federal Credit Union for an amount of \$1,189.34. The full amount under the promissory note shall be payable to: Hocak Federal Credit Union, P.O. Box 429, Black River Falls, Wisconsin 54615. Furthermore, this Court grants the plaintiff's request for a collection fee of \$139.00 and a post-judgment cost equal to \$47.00. Therefore, Gene and Diana DeMarrias shall pay an additional \$186.00 to the plaintiffs.

All parties have the right to appeal a final judgement or order of the Trial Court. If either party is dissatisfied with the decision rendered by this Court, they may file a *Notice of Appeal* with the Ho-Chunk Supreme Court within thirty (30) calendar days from the date such final judgement or order is rendered.

IT IS SO ORDERED this 4th day of August 1998 at the HCN Trial Court in Black River Falls, Wisconsin from within the sovereign lands of the Ho-Chunk Nation.

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Hon. Joan Greendeer-Lee, Associate Judge
Ho-Chunk Nation Trial Court

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